K

1951

File No. B. Tenancy (2nd Amdt.)/51

Legal Department

B BRANCH

Subject:—

A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948 — By Shri. Ambalal C. Shah M.L.A.

L.A. Bill No. LXVI of 1950

Bom. Act No. XXXIV of 1951

21/E

File No. B. Tenancy (2nd Amdt.)/51

Gen. 194 a.

828 B.

Legal Department.

The subject-matter of the Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948, proposed to be introduced by Shri Ambalal C. Shah, M.L.A., in the Bombay Legislative Assembly, falls under entries 14 and 18 in List II in the Seventh Schedule to the Constitution of India. The State Legislature is, therefore, competent to undertake the proposed legislation.

2. The Bill does not require any sanction or recommendation under the Constitution.

3. As the Bill does not relate to any matter in the Concurrent Legislative List, it will not be necessary to reserve the Bill, if passed, for the consideration of the President with reference to article 254(2) of the Constitution,

Id/-J.R.D. 3/10
Additional Secretary to Government.

Copy to -

The Bombay Legislature Department.

BKS. 6/7

U.R. to R.D. No 53 L, dated the 4th Oct. 1950

DM 13/7 13/7

Legal Department.

The object of the mover of the Bill is to provide that a tenant who obtains a mortgage of the land and becomes a mortgagee in possession should, on redemption of the mortgage, be entitled to revert to his position as a tenant and to continue in possession of the land. In making this proposal the mover has lost sight of a fundamental principle which underlies the law of "Landlord and Tenant". The principle is one of "merger" and has been embodied in section 111(d) of the Transfer of Property Act,1882. That clause provides that in case the interests of the lessor and lessee become vested in one person, the tenancy comes to an end. As a mortgagee in possession, the tenant acquires the rights to lease the land. The above principle will therefore govern a case when a tenant acquires the right of a mortgagee in possession. As a mortgagee in possession he would be holding the land and would cease to be a tenant. He is entitled to continue in possession in his right as a mortgagee and not as a tenant. He cannotbe a tenant holding from himself. By section 3 of the Bombay Tenancy and Agricultural Lands Act,1948, the provisions of Chapter V of the Transfer of Property Act,1882, which includes section 111, have been made applicable to the tenancies and leases under the former Act. In law, therefore, there cannot be any such person as a 'creditor tenant-cultivator'. Under section 60 of the Transfer of Property Act, which applies to the mortgages including those of agricultural lands, on the redemption of a mortgage, a mortgagee if he is in possession has to deliver the mortgaged property to the mortgagor. It would be against the basic principles of law, that, although a debtor or a mortgagor has paid off

P.T.O.

his mortgage debt, he should not get back the possession of the land and that the rights of a person as a tenant which was extinguished by his own act of taking a mortgage should be revived by a statutory provision. Such a provision is likely to be held by courts as an unreasonable restriction on the fundmental right of a person to hold his own property and as being opposed to the Constitution. The Bill should be opposed on these grounds.

Sd/-J.R.Dhurandhar
Additional Secretary to Government.

BKS. 6/7

No. 15610
Legal Department,
Bombay Castle (Bombay No.1)
1st October 1951.

From

Shri J.R.Dhurandhar,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject:- The Bombay Tenancy and Agricultural Lands (Second Amendment) Bill, 1951.

Sir,

With reference to article 200 of the Constitution of India, I am directed to forward herewith for the assent of His Excellency the Governor the authentic copy ofthe Bombay Tenancy and Agricultural Lands (Second Amendment) Bill, 1951, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 31st August 1951 and the 14th September 1951, respectively.

2. The subject-matter of the Bill falls under entries 14 and ~~19~~ 18 in List II in the Seventh Schedule to the Constitution of India. It is not necessary to reserve the Bill for the consideration of the President with ~~x~~ reference to article 31 (3) or ~~3~~ 254(2) or any other article of the Constitution.

3. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

4. I also forward herewith one copy of each of the items.

	Nos.
1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	1, 2,
2. Report of the Select Committee together with the Bill as amended by the Select Committee.	3
3. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council	and 5
4. Bill as read for the third time and passed by the Bombay Legislative Council.	and
5. Extracts from the proceedings of the Bombay Legislative Assembly dated the 5th October 1950, 19th February 1951 and the 31st August 1951 and of the Bombay Legislative Council dated the 14th September 1951.	two copies of item

P.T.O.

No.4 of the papers noted in the margin.

Yours faithfully,

Id/_J.R.D. 6/9
Secretary to Government.

Through:

The Secretary to the Government of Bombay,
Revenue Department.

BKS. 6/7

No. G.S.-2620

FROM

THE SECRETARY TO THE GOVERNOR OF BOMBAY

To

The Secretary to Government,

Legal Department.

GOVERNMENT HOUSE

GANESHKIND,
Poona 7; October 9, 1951.

Subject: The Bombay Tenancy and Agricultural Lands (Second Amendment) Bill, 1950.

Sir,

With reference to your letter No. 15610, dated October 1, 1951, I am directed to return herewith the authentic copy of the Bombay Tenancy and Agricultural Lands (second Amendment) Bill, 1950, with His Excellency the Governor's assent signified thereon.

Yours faithfully,

Secretary to the Governor
of Bombay.

BKS. &
6/7

LEGAL DEPARTMENT.

The Bombay Tenancy and Agricultural Lands (Second Amendment) Act, 1951, has been published in the Bombay Government Gazette, dated the 16th October 1951.

2. Attention of the Revenue Department is invited to Government Circular, Legal Department, No.6255, dated the 8th May 1950, regarding application of Bombay Acts to scheduled areas in the State of Bombay. Under paragraph 5 of Part B of the Fifth Schedule to the Constitution the said Act automatically applied to those areas. If, however, the Department thinks that the said Act should not apply to scheduled areas or any part thereof or should apply with certain exceptions or modifications to the said areas or any part thereof, a notification to that effect will be necessary under the said paragraph 5 of Part B of the Fifth Schedule to the Constitution. The Department may, therefore, obtain the orders of Government as to whether the said Act should or should not be applied to those areas or any part thereof or should be applied with any exceptions or modifications.

Id/-
Assistant Secretary to Government.

U.R. to R D. No. 16839, dated the 23rd October 1951.

BKS. 6/7.

Acts.

Publication of the Bombay Tenancy and Agricultural Lands (Second Amendment) Act, 1951.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 16418.

Bombay Castle, 16th October 1951.

Letter to the Secretary to the Governer, No. 15610, dated the 1st October 1951.

Letter from the Secretary to the Governer, No.G.S.2620, dated the 9th October 1951.

"With reference to your letter No. 15610, dated the October 1, 1951, I am directed to return herewith the authentic copy of the Bombay Tenancy and Agricultural Lands (Second Amendment) Bill, 1951, with His Excellency the Governer's assent signified thereon".

RESOLUTION:- The law should be published as Bombay Act No. XXXIV of 1951, in the Bombay Government Gazette dated the 16th October 1951.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department.

By order of the Governor of Bombay,

S. L. CHAUDHARI,
Deputy Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department and 10 copies to the Revenue Department),
The Revenue Department,) with a
The Oriental Translator to Government,) copy of
The Bombay Legislature Department,) the Act.
The Director of Publicity, Bombay,)
The Enquiry Officer for the Secretariat, Bombay

*With four extra copies of the Act.

BKS. 6/7

123

[To be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill for the introduction of which leave was granted to Shri Ambalal C. Shah, M.L.A., at the meeting of the Bombay Legislative Assembly on the 5th October 1950, is published under rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. LXVI OF 1950.

A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948.

Bom. LXVII of 1948.

WHEREAS it is expedient to amend the Bombay Tenancy and Agricultural Lands Act, 1948, in the manner hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1950.

Bom. LXVII of 1948.

Amendment of section 4 of Bom. LXVII of 1948.

2. In paragraph (*c*) of section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called the said Act), after the word "possession", the following shall be inserted, namely :—

", provided that he was not in possession of the mortgaged lands before the mortgage".

Amendment of Schedule to Bom. LXVII of 1948.

3. In the Schedule to the said Act, in column 4—Extent of repeal, after sub-section (*3*) of section 4, the following shall be inserted, namely :—

"(*4*) If the mortgagees with possession, who were in possession of the lands as tenants before the mortgages, are deprived of their possession by redemption decrees, etc., they are entitled for repossession of the lands as tenants, if they apply for such repossession within one year after the coming into force of this Act.".

STATEMENT OF OBJECTS AND REASONS.

The persons who were formerly tenants and who become mortgagees afterwards are not given protection under the Bombay Tenancy and Agricultural Lands Act, 1948, at the time of redemption of such mortgages, as they are either deprived of, or are liable to be deprived of, their possession at that time. Such persons should be given protection, and their possession continued, or if their possession is taken away, it should be restored to them. The amendments are proposed from this point of view.

(Signed) AMBALAL C. SHAH.

S. K. SHEODE,
Secretary to the Bombay Legislative Assembly.

Bombay, 27th November 1950.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

127

L. A. BILL No. LXVI OF 1950.

A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948.

(As introduced on the 5th October 1950 and published in the "Bombay Government Gazette" of the 30th November 1950).

WHEREAS it is expedient to amend the Bombay Tenancy and Agricultural Lands Act, 1948, in the manner hereinafter appearing; It is hereby enacted as follows:—

Bom. LXVII of 1948.

1. This Act may be called the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1950. Short title.

2. In paragraph (*c*) of section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called the said Act), after the word "possession", the following shall be inserted, namely:— Amendment of section 4 of Bom. LXVII of 1948.

LXVII of 1948.

", provided that he was not in possession of the mortgaged lands before the mortgage".

3. In the Schedule to the said Act, in column 4—Extent of repeal, after sub-section (*3*) of section 4, the following shall be inserted, namely:— Amendment of Schedule to Bom. LXVII of 1948.

"(*4*) If the mortgagees with possession, who were in possession of the lands as tenants before the mortgages, are deprived of their possession by redemption decrees, etc., they are entitled for repossession of the lands as tenants, if they apply for such repossession within one year after the coming into force of this Act.".

MO-IV Bk Hb 446

STATEMENT OF OBJECTS AND REASONS.

The persons who were formerly tenants and who become mortgagees afterwards are not given protection under the Bombay Tenancy and Agricultural Lands Act, 1948, at the time of redemption of such mortgages, as they are either deprived of, or are liable to be deprived of, their possession at that time. Such persons should be given protection, and their possession continued, or if their possession is taken away, it should be restored to them. The amendments are proposed from this point of view.

AMBALAL C. SHAH.

BOMBAY LEGISLATURE
DEPARTMENT

[L. A. BILL No. LXVI OF 1950.]

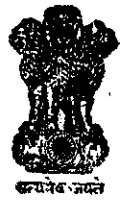
(As introduced on the 5th October 1950 and published in the " Bombay Government Gazette " of the 30th November 1950)

A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948.

[Shri AMBALAL C. SHAH, M.L.A.]

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Registered No. B-1



The

Bombay Government Gazette

PUBLISHED BY AUTHORITY

MONDAY, 27TH AUGUST 1951.

eparate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script id the translations to be published in the "Bombay Government Gazette". Th tes of publication to be reported.]

The following report of the Select Committee of the Bombay Legislative Assembly on the Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948, and the Bill as amended by the Select Committee are, in accordance with the provisions of sub-rule (3) of rule 88 of the Bombay Legislative Assembly Rules, published for general information :—

L. A. BILL No. LXVI OF 1950.

A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948.

REPORT OF THE SELECT COMMITTEE.

We,* the members of the Select Committee appointed to consider L. A. Bill No. LXVI of 1950 (A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948), beg to state as follows :—

We have carefully considered the provisions of the Bill. In our opinion the principle of the Bill which has been accepted by the Legislative Assembly can be carried out by providing that in the case of a usufructary mortgage in favour of a tenant, the tenancy should remain in abeyance during the period in which the mortgage subsists, and that after the expiry of the said period, it should be lawful to the tenant to continue to hold the land as such tenant. In the Bill it was proposed to amend section 4 and the Schedule. But in our opinion the

* The signatures of Shri M. S. Patel, Shri M. R. Patel, Shri S. R. Rane, Shri M. M. A. Bhaiji; Shri R. A. Kulkarni and Shri S. L. Peje will be notified when received.

proper and suitable method of carrying out the purpose will be to insert a provision of the nature in the revised clause 2 as section 25A, as follows :—

Tenancy to be in abeyance during usufructary mortgage in favour of tenant.

"25A. If any land is mortgaged by a landlord by way of a usufructary mortgage to a tenant cultivating such land, the tenancy of such land shall be in abeyance during the period the mortgage subsists. After the expiry of the said period, it shall, notwithstanding any other law for the time being in force, be lawful to the tenant to continue to hold the land on the terms and conditions on which he held it before the mortgage was created."

We have revised the Bill accordingly.

(Signed) MORARJI DESAI.

(,,) D. N. DESAI.

(,,) K. F. PATIL.

(,,) AMBALAL C. SHAH.

(,,) B. D. LALA.

(,,) V. P. PAWAR.

(,,) PETER ALVARES.

(,,) T. S. JADHAV.

(,,) G. V. MOMIN.

Note.—*Deletions made by the Select Committee are shown in square brackets and additions are shown in italics.*

L. A. BILL No. LXVI OF 1950.

A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948.

(As amended by the Select Committee.)

Bom. LXVII of 1948.

WHEREAS it is expedient to amend the Bombay Tenancy and Agricultural Lands Act, 1948, in the manner hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Bombay Tenancy and Agricultural Lands (*Second* Amendment) Act, [1950] *1951*. Short title.

2. [In paragraph (c) of section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called the said Act), after the word "possession", the following shall be inserted, namely:— [Amendment of section 4 of Bom. LXVII of 1948.]

", provided that he was not in possession of the mortgaged lands before the mortgage".]

Bom. LXVII of 1948.

After section 25 of the Bombay Tenancy and Agricultural Lands Act, 1948, the following section shall be inserted, namely:— *Insertion of new section 25A in Bom. LXVII of 1948.*

"25A. If any land is mortgaged by a landlord by way of a usufructary mortgage to a tenant cultivating such land, the tenancy of such land shall be in abeyance during the period the mortgage subsists. After the expiry of the said period it shall, notwithstanding any other law for the time being in force, be lawful to the tenant to continue to hold the land on the terms and conditions on which he held it before the mortgage was created." *Tenancy to be in abeyance during usufructary mortgage in favour of tenant.*

[3. In the Schedule to the said Act, in column 4—Extent of repeal, after sub-section (3) of section 4, the following shall be inserted, namely:— [Amendment of Schedule to Bom. LXVII of 1948.]

"(4) If the mortgagees with possession, who were in possession of the lands as tenants before the mortgages, are deprived of their possession by redemption decrees, etc., they are entitled for repossession of the lands as tenants, if they apply for such repossession within one year after the coming into force of this Act."]

S. K. SHEODE,
Secretary to the Bombay
Legislative Assembly.

Council Hall,
Poona, 24th August 1951.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

175

L. A. BILL No. LXVI OF 1950.

A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948.

(As read for the third time and passed by the Legislative Assembly on the 31st August 1951.)

Bom. LXVII of 1948.

WHEREAS it is expedient to amend the Bombay Tenancy and Agricultural Lands Act, 1948, in the manner hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Bombay Tenancy and Agricultural Lands (Second Amendment) Act, 1951. Short title.

Bom. LXVII of 1948.

2. After section 25 of the Bombay Tenancy and Agricultural Lands Act, 1948, the following section shall be inserted, namely :— Insertion of new section 25A in Bom. LXVII of 1948.

"25A. If any land is mortgaged by a landlord by way of a usufructary mortgage to a tenant cultivating such land, the tenancy of such land shall be in abeyance during the period the mortgage subsists. After the expiry of the said period it shall, notwithstanding any other law for the time being in force, be lawful to the tenant to continue to hold the land on the terms and conditions on which he held it before the mortgage was created." Tenancy to be in abeyance during usufructary mortgage in favour of tenant.

MO-1 Bk Hb 187—1

STATEMENT OF OBJECTS AND REASONS.

The persons who were formerly tenants and who become mortgagees afterwards are not given protection under the Bombay Tenancy and Agricultural Lands Act, 1948, at the time of redemption of such mortgages, as they are either deprived of, or are liable to be deprived of, their possession at that time. Such persons should be given protection, and their possession continued, or if their possession is taken away, it should be restored to them. The amendments are proposed from this point of view.

AMBALAL C. SHAH.

185

L. A. BILL No. LXVI OF 1950.

A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948.

(As read for the third time and passed by the Legislative Assembly on the 31st August 1951.)

(As read for the third time and passed by the Legislative Council on the 13th September 1951.)

Bom. LXVII of 1948.

WHEREAS it is expedient to amend the Bombay Tenancy and Agricultural Lands Act, 1948, in the manner hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Bombay Tenancy and Agricultural Lands (Second Amendment) Act, 1951. Short title.

Bom. LXVII of 1948.

2. After section 25 of the Bombay Tenancy and Agricultural Lands Act, 1948, the following section shall be inserted, namely:— Insertion of new section 25A in Bom. LXVII of 1948.

"25A. If any land is mortgaged by a landlord by way of a usufructary mortgage to a tenant cultivating such land, the tenancy of such land shall be in abeyance during the period the mortgage subsists. After the expiry of the said period it shall, notwithstanding any other law for the time being in force, be lawful to the tenant to continue to hold the land on the terms and conditions on which he held it before the mortgage was created." Tenancy to be in abeyance during usufructary mortgage in favour of tenant.

MO-1 Bk Hb 221

BOMBAY LEGISLATURE
DEPARTMENT

[L. A. BILL No. LXVI OF 1950.]

(As read for the third time and passed by the Legislative Assembly on the 31st August 1951.)

(As read for the third time and passed by the Legislative Council on the 13th September 1951.)

A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948.

[Shri AMBALAL C. SHAH, M.L.A.]

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

REGISTERED No. B-1

The
Bombay Government Gazette
PUBLISHED BY AUTHORITY

TUESDAY, 16TH OCTOBER 1951.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

Acts of the Bombay Legislature and Ordinances promulgated and Regulations made by the Governor.

CONTENTS

	PAGE
BOMBAY ACT No. XXXIV OF 1951—An Act to amend the Bombay Tenancy and Agricultural Lands Act, 1948	198

The following Act of the Bombay Legislature having been assented to by the Governor on the 8th October 1951 is hereby published for general information.

J. R. DHURANDHAR,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXXIV OF 1951.

(*First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 16th October 1951.*)

An Act to amend the Bombay Tenancy and Agricultural Lands Act, 1948.

Bom. LXVII of 1948.

WHEREAS it is expedient to amend the Bombay Tenancy and Agricultural Lands Act, 1948, in the manner hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bombay Tenancy and Agricultural Lands (Second Amendment) Act, 1951.

Bom. LXVII of 1948.

Insertion of new section 25A in Bom. LXVII of 1948.

2. After section 25 of the Bombay Tenancy and Agricultural Lands Act, 1948, the following section shall be inserted, namely:—

Tenancy to be in abeyance during usufructuary mortgage in favour of tenant.

"25A. If any land is mortgaged by a landlord by way of a usufructuary mortgage to a tenant cultivating such land, the tenancy of such land shall be in abeyance during the period the mortgage subsists. After the expiry of the said period it shall, notwithstanding any other law for the time being in force, be lawful to the tenant to continue to hold the land on the terms and conditions on which he held it before the mortgage was created."

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

2355

L. A. BILL No. LXVI OF 1950 (A BILL TO AMEND THE BOMBAY TENANCY AND AGRICULTURAL LANDS ACT, 1948).

Shri SHANTILAL H. SHAH: Sir, I beg to introduce L. A. Bill No. LXVI of 1950 (A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948).*

The Hon. the CHAIRMAN: The Bill is introduced.

Shri SHANTILAL H. SHAH: Sir, I beg to move that L. A. Bill No. LXVI of 1950 be read a first time.

Question proposed.

Shri SHANTILAL H. SHAH: Sir, I shall very briefly state the purpose of this Bill without going into the technicalities of the law. The Bombay Tenancy and Agricultural Lands Act, 1948, has led to an anomalous and unexpected position, which could be best illustrated by giving an example to the House. Suppose X was a tenant who had taken lands on lease from a landlord A. After some time, the landlord was in need of money and the tenant advanced money to the landlord. For the purpose securing the loan, the landlord mortgaged the agricultural lands to the tenant and the tenant instead of paying rent and recovering interest, became mortgagee in possession so that the relationship of landlord and tenant was substituted by that of mortgagor and mortgagee, who became a mortgagee in possession. When the Bombay Agricultural Debtors' Relief Act came into force, the landlord also being an agriculturist, applied for relief under that Act and the amount payable by him was settled by the Board at a certain figure. Let us say, Rs. 400 were advanced by the tenant to his landlord and that the Board decided that all the dues should be paid at a particular percentage, so that the tenant who had advanced Rs. 400 would get Rs. 100 in full settlement of his claim. On payment the mortgage comes to an end and the lands go back to the landlord who had taken the loan. The tenant who had advanced money not only loses a fair share out of the money which he had advanced but also loses the tenancy rights. In such a case, the tenant's right as tenant should be revived, that is to say, he should not lose both his money as well his rights as a tenant. This, in short, Sir, is the substance of the Bill. As I said in the beginning, it is intended to rectify the anomalous and unexpected position. I hope the House will accept the Bill.

Shri D. V. BELVI: (Sholapur-*cum*-Belgaum-*cum*-Bijapur): Sir, the Bill appears to be quite innocuous, but at the same time it appears to be unnecessary as under the present Bombay Tenancy and Agricultural Lands Act, 1948, only two kinds of tenants have been recognised, namely, protected tenant and ordinary tenant. All other kinds of tenancy have been abolished in the State. There are now no tenants on sufferance.

---

*As passed by the Bombay Legislative Assembly on the 31st August 1951.

[Shri D. V. Belvi]

Now, if we take the rights of these two classes of tenants into consideration, we find that this piece of legislation is absolutely unnecessary. Not that it is harmful but it is not necessary. I shall show how this is so.

Supposing the tenant is a protected tenant, his rights are always there. If he himself becomes a mortgagee in possession, the position is not at all altered. He continues to receive the interest on the amount advanced by him. His tenancy rights are never abolished. Now, take the case of the ordinary tenant. Under the present law, he has the right to hold land for 10 full years. Supposing he becomes a mortgagee in possession, he has the right of a mortgagee in possession. But supposing the mortgage rights are abolished and the land is redeemed after 2 years, the land will not go back to the landlord, and it ought not to because the tenant has already enjoyed it for 2 years and he has a right to enjoy it for full 10 years. So, even after the redemption of the land, under the present law, the tenant will continue to enjoy it for 8 more years and after that period is over the landlord has to apply to the Mamlatdar for restoration of possession of the land. This is the case with the ordinary tenants. So, I do not see why this piece of legislation is at all necessary. So far as I am aware, no decision has been given by any Civil Court to say that the land must go back to the landlord. Therefore, this piece of legislation is not necessary. Of course, it is harmless. It is plain, but what is plain need not be explained. It is, therefore, my request to Government not to burden the law books with unnecessary legislation. These are the few remarks which I wanted to make.

Shri M. G. GOPI (Dharwar-*cum*-Kanara) : Sir, the validity of the Tenancy Act is being questioned in an appropriate court of law and I think that in about two or three days the Supreme Court is going to give its decision in the matter. In view of this circumstance, I request this House to consider whether it will not be desirable to postpone the consideration of this measure to some future date.

Shri SHANTILAL H. SHAH : Sir, I am obliged to the hon. Member Shri Belvi for his support on the ground that the Bill is innocuous and harmless. I wish that his statement that it is unnecessary were correct. The Bill was brought because certain decrees have already been passed in Ahmedabad and in the merged are as with the result that the tenants have not been able to get back their lands. The hon. Member knows that, when there is a diversity of opinion, the opinion of the court has to be taken as the final one. It is with a view to meet that position that this Bill has been brought.

I do not think that the hon. Member Shri Gopi needs any reply because the court will deal with it.

Shri B. G. KHER (Chief Minister) : Sir, the hon. Member Shri Belvi's contention is correct in the sense that section 111 (*d*) of the Transfer of Property Act embodies the principle which is known as the 'doctrine of merger'. That doctrine is to the effect that, in case the interest of the lessor or lessee becomes vested in one person, the tenancy would come to an end. Now, whatever may be the position with regard to the doctrine of merger and equity in England, the hon. Member Shri Shantilal Shah has already told the House that actually decrees have been passed in Ahmedabad which rendered the enactment of this piece of legislation necessary (*Interruption*). If a Subordinate Judge or a Civil Judge gives a certain decision, that decision is binding on the hon. Member, on the whole House and on myself until it is reversed by the District Court and the decision of the District Court will be similarly binding until it is reversed by the High Court and the decision of the High Court will be binding until it is reversed by the Spreme Court. Now, Sir, the hon. Member Shri Gopi said that the Supreme Court is going to do something to the Tenancy Act or is not going to do something to it. When the Supreme Court does something, we will abide by its decision. Until the Supreme Court gives a decision, we will have to abide by the decision of the Civil Judge.

As regards the observations of the hon. Member Shri Belvi who, as hon. Members are aware, has been practising for over half a century and for whose knowledge of law I have the highest respect, although he questioned the necessity of this piece of legislation, be certified that it was harmless, that it was safe and that it would not do any harm. So, I am sure that hon. Members will be satisfied with the Bill which has been passed by the Lower House and will support it.

Question put, and agreed to.

Shri SHANTILAL H. SHAH : Sir, I beg to move that L. A. Bill No. LXVI of 1950 (A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948) be read a second time.

Question put, and agreed to.

Clauses 1 and 2 and the preamble ordered to stand part of the Bill.

Shri SHANTILAL H. SHAH : Sir, I beg to move that L. A. Bill No. LXVI of 1950 (A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948) be read a third time and passed.

Question put, and agreed to.

The Hon. the CHAIRMAN : L. A. Bill No. LXVI of 1950 as read for the third time and passed by the Legislative Assembly, is read a third time and passed.

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